



RCE

IN THE UNITED STATES PATENT AND TRADEMARK OFFICE

Applicant: Michael Gauselmann
Serial No: 09/491,779 Art Unit: 3711
Filing Date: January 26, 2000
Title: METHOD FOR OPERATING A COIN ACTUATED ENTERTAINMENT AUTOMAT
Examiner: Dolores S. Collins

June 25, 2003

Attorney's Docket No.: ADP231T1

TRANSMITTAL LETTER

Hon. Commissioner of Patents and Trademarks
Washington, D.C. 20231

RECEIVED
JUL 07 2003
TECHNOLOGY CENTER R3700

SIR:

Transmitted herewith for filing is:

RESPONSE TO NOTICE OF IMPROPER REQUEST FOR CONTINUED EXAMINATION
(RCE) dated June 25, 2003 (10 pages)
 COPY OF AMENDMENT DATED MAY 8, 2002 dated May 8, 2002 (8 pages)
 COPY OF PRELIMINARY AMENDMENT dated December 11, 2002 (6 pages)
 COPY OF PRELIMINARY AMENDMENT. REQUEST FOR CONSIDERATION
dated April 4, 2003 (32 pages)

(X) The applicant hereby petitions the Commissioner of Patents and Trademarks to extend the time for response to any Office Action outstanding in the above captioned matter as necessary to avoid abandonment of the application. Please charge my deposit account No.11-0224 in the amount required to cover the cost of the extension. Any deficiency or overpayment should be charged or credited to the above account.

(X) The Commissioner is hereby authorized to charge any fees under 35 U.S.C. 1.16, and 1.17, after a mailing of a Notice of Allowance under 35 USC 1.18 or any additional fees which may be required during the entire pendency of the application, or credit any overpayment, to Acct. No.11-0224. A duplicate copy of this sheet is enclosed. If and only if account funds should be insufficient, immediately contact our associate, Lisa Zumwalt, at (703)415-0579, who will pay immediately to avoid deprivation of rights.

() Please charge my Deposit Account No.11-0224 in the amount of \$ _____. A duplicate copy of this sheet is enclosed.

A signature or signatures required for the above recited document(s) is (are) provided herebelow. Such signature(s) also provide(s) ratification for any required signature appearing to be defective in the above recited document(s).

Horst M. Kasper
Horst M. Kasper, 13 Forest Drive, Warren, N.J.07059
Reg. No. 28,559 Tel.(908)526-1717

Mailing Certification:

I hereby certify that this correspondence is being deposited with the United States Postal Service as first class mail in an envelope addressed to Commissioner of Patents and Trademarks, Washington, D.C. 20231, on 26 JUN 2003

Signature.....
Holger

*%pt0:trans0(adp231T1) (June 25, 2003(am

26 JUN 2003

Date.....



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Resp.
HJH
3/10/03

IN THE UNITED STATES PATENT AND TRADEMARK OFFICE

Applicant: Michael Gauselmann

Serial No: 09/491,779

Art Unit: 3711

Filing Date: January 26, 2000

Title: METHOD FOR OPERATING A COIN ACTUATED
ENTERTAINMENT AUTOMAT

Examiner: Dolores R. Collins

June 25, 2003

Attorney's Docket No.: ADP231AA

RESPONSE TO
NOTICE OF IMPROPER REQUEST FOR
CONTINUED EXAMINATION (RCE)

Hon. Commissioner of Patents and Trademarks
Washington, D.C. 20231

RECEIVED

JUL 07 2003

TECHNOLOGY CENTER R3700

SIR:

This is in response to the Office Action mailed on May 2, 2003. The Office Action did not set a statutory period for response. Applicant petitions that, if required, the time for response be extended and the corresponding fee be charged. The Commissioner is hereby authorized to charge any additional fees which may be required to Acct. No. 11-0224. Applicant further respectfully requests that this response be accepted as a bona fide effort to meet any potential response requirements outstanding and due in the above captioned matter.

The *Notice of Improper Request for Continued Examination* (RCE) exhibits a cross marking under point 7. Point 7 states "The request was not accompanied by a submission as required by 37 C.F.R. 1.114. Since the application is not under appeal, the time period set forth in the final Office Action or notice of allowance continues to run from the mailing date of that action or Notice."

Applicant respectfully disagrees.

37 CFR par. 114 (c) reads as follows:

(c) A submission as used in this section includes, but is not limited to the written description, claims or drawings, new arguments, or new evidence in support of patentability.

Thus, the submission clearly includes a submission of a PRELIMINARY AMENDMENT - REQUEST FOR RECONSIDERATION.

The Office Action of December 31, 2002, in the Summary and on page 6 made the Office Action "FINAL". Applicant respectfully disagrees to the Finality of the Office Action of December 31, 2002.

Applicant mailed a Request for Continued Examination and a Request for one month suspension on September 10, 2002, which was received on

September 17, 2002 by the Mail Room of the United States Patent and Trademark Office. Not withstanding the request for suspension, a Final Office Action was issued prematurely on October 3, 2002.

Thereupon applicant filed a Request for three months suspension of Action on October 10, 2002 explaining the situation and requesting entry into the file of the amendment filed May 15, 2002. Applicant also noted that the Final Rejection had been mailed prematurely.

On December 16, 2002 mailed an additional amendment with a new claim "9" to be considered in this case.

Even though the applicant had filed a Request for continued examination and had submitted additionally an amendment with a new claim 9, the First Office Action mailed on December 31, 2002 was made final.

Applicant respectfully requests withdrawal of the improper Finality of the Office Action of December 31, 2003.

Applicant filed on March 31, 2003 a Request for Continued examination, which was received by the Mail Room of the United States Patent and Trademark Office on April 8, 2003. This Request for Continued Examination was based on the improper Final Rejection and should not have been necessary to be filed by the Applicant. The Request for Continued

Examination received by the mail room on April 8, 2003 was filed at a time, when the claim 9 submitted on December 16, 2002 had not yet seen a non-Final Office Action.

On April 7, 2003 applicant filed a Preliminary Amendment with new claims 10 through 18.

On April 12, 2003 an Advisory Action was issued stating that the amendment will not be entered.

On May 2, 2003 the "Notice of Improper Request for Continued Examination" was issued.

37 CFR par. 114 (d) reads as follows:

"(d) if the applicant timely files a submission and fee set forth in par 117 (e), the Office will withdraw the finality of any Office Action and the submission will be entered and considered."

Applicant respectfully submits that the submission of May 8, 2002 received by the Mail Room on May 15, 2002 was timely filed relative to the request for Continued Examination filed on September 10, 2002.

Applicant respectfully submits that the submission of May 8, 2002 received by the Mail Room on May 15, 2002 was timely filed relative to the request for Continued Examination filed on March 31, 2003 since as of

today no non-Final Office Action has been received in Response to the submission of May 8, 2002.

Applicant respectfully submits that the submission of December 16, 2002 received by the Mail Room on December 23, 2002 was timely filed relative to the request for Continued Examination filed on March 31, 2003 since as of today no non-Final Office Action has been received in Response to the submission of December 16, 2002 and to claim 9.

Applicant respectfully submits that the submission of April 7, 2003 was timely filed relative to the request for Continued Examination filed on March 31, 2003 and received by the Mail Room of the United states Patent Office. The submission of April 7, 2003 was mailed by the applicant prior to receipt of the Request for Continued Examination by the Mail Room of the United States Patent and Trademark Office.

An Advisory Action was mailed by the Examiner on April 21, 2003 indicating that the Examiner received the submission of April 7, 2003 timely and prior to the Request for Continued Examination received by the Mail Room of the United States Patent and Trademark Office on April 8, 2003.

Even though the submission of May 8, 2002 was timely filed and the fee was paid, the Office still has not withdrawn the finality of the one-month Final Office Action of April 10, 2002. Applicant also notes that the Office Action of April 10, 2002 with a one-month response requirement should not have been Final, since a Final Office action is associated with a three-month response requirement.

Applicant petitions that the finality of the Office Action of April 10, 2002 be withdrawn and the submission of May 8, 2002 be entered and considered.

Applicant petitions that the finality of the Office Action of October 3, 2002 be withdrawn.

Applicant petitions that the finality of the Office Action of December 31, 2002 be withdrawn and the submission of December 16, 2002 be entered and considered.

As to point 7 of the Office Action of May 2, 2003 saying that the request was not accompanied by a submission, applicant notes that there is no requirement in 37 CFR 1.114 (d) that the request be accompanied by a

submission. 37 CFR 1.114 (d) requires only a timely filing of the submission, but does not say anything about the issue of point 7, namely that the RCE be accompanied by the submission.

Applicant urges that a hypothetical requirement that a Request for Continued examination be accompanied by a Submission would be very wasteful, since it would require as a precautionary measure that all submissions made be again copied and for companionship purposes with the RCE be resubmitted. Such a hypothetical requirement as apparently suggested in the Notice would be clear government mandated wastefulness.

Applicant further submits that applicant filed on May 8, 2002 an Amendment dated May 8, 2003. The Amendment states in the first sentence: "This is in response to the Office Action mailed on April 10, 2002 ..." and submits new claims 19 and 20. Applicant submits that such amendment has not yet received any response to by any non-Final Office Action. Applicant further submits that such amendment as filed on May 8, 2002 was timely under 37 CFR 1.114 (d), since no non-Final Office Action has issued in response to the Amendment filed May 8, 2002 and since the Submission of May 8, 2002 occurred prior to the filing of the RCE of March 31, 2003.

Entry of the Amendment of May 8, 2002 is respectfully requested.

A copy of the Amendment of May 8, 2002 is attached.

Applicant further submits that applicant filed on December 16, 2002 a Preliminary Amendment dated December 11, 2002. The Preliminary Amendment submits a new claim 9. Applicant submits that such a Preliminary Amendment with a new claim is entitled to receive consideration in a non-Final Office Action. Applicant further submits that such Preliminary Amendment as filed on December 16, 2002 was timely under 37 CFR 1.114 (d), since the Examiner had not yet issued a non-Final Office Action relative to claim 9 of the Preliminary amendment filed December 16, 2002.

Entry of the Preliminary Amendment filed December 16, 2002 is respectfully requested.

A copy of the Preliminary Amendment filed December 16, 2002 is attached.

Applicant further submits that applicant filed on April 7, 2003 a Preliminary Amendment – Request for Reconsideration dated April 4, 2003. The Preliminary Amendment submits new claims 10 through 18. Applicant submits that such a Preliminary Amendment – Request for Reconsideration

with new claims 10 through 18 is entitled to receive consideration as a submission under 37 CFR par. 114 (d) in a non-Final Office Action. Applicant further submits that such Preliminary Amendment – Request for Reconsideration as filed on April 7, 2003 was timely under 37 CFR 1.114 (d), since the Examiner issued on April 21, 2003 an Advisory Action without any indication that the Request for Continued Examination had reached the Examiner at the time the Advisory action was issued.

Entry of the Preliminary Amendment – Request for Reconsideration is respectfully requested.

A copy of the Preliminary Amendment – Request for Reconsideration filed April 7, 2003 is attached.

Applicant further respectfully requests that the *Notice of Improper Request for* continued examination (RCE) issued May 2, 2003 be withdrawn.

Applicant further respectfully requests that the Amendment filed May 8, 2002, that the Preliminary Amendment filed December 16, 2002 and the Preliminary Amendment – Request for Reconsideration filed April 7, 2003 be accepted as timely submissions under 37 CFR 1.114 (d).

Reconsideration of the Notice of improper request for continued examination is respectfully requested.

A refund of excessive fees paid for an additional Request for Continued Examination fee paid twice on September 10, 2002 and paid on March 31, 2003 without receipt of any non-Final Office Action despite timely submissions on May 8, 2002 and December 16, 2002 by the Applicant is respectfully requested.

Respectfully submitted,

Michael Gauselmann

By:



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Attorney's Docket No.: ADP231AA

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